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15
16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
18

19 In Re WAL-MART STORES, INC. WAGE
20 AND HOUR LITIGATION

Case No. C 06-02069 SBA

CLASS ACTION

21 This Document Relates To:

STIPULATED PROTECTIVE ORDER

22 Case Nos.

23 C 06 02069 SBA (Smith) and
24 CV 06 05411 SBA (Ballard)

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1
2 1. PURPOSES AND LIMITATIONS

3 Disclosure and discovery activity in this action are likely to involve production of
4 confidential, proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.
6 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
7 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
8 all disclosures or responses to discovery and that the protection it affords extends only to the
9 limited information or items that are entitled under the applicable legal principles to treatment as
10 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
11 Stipulated Protective Order creates no entitlement to file confidential information under seal;
12 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards
13 that will be applied when a party seeks permission from the court to file material under seal.

14 2. DEFINITIONS

15 2.1 Party: any party to this action, including all of its officers, directors, employees,
16 consultants, retained experts, and outside counsel (and their support staff).

17 2.2 Disclosure or Discovery Material: all items or information, regardless of the
18 medium or manner generated, stored, or maintained (including, among other things, testimony,
19 transcripts, or tangible things) that are produced or generated in disclosures or responses to
20 discovery in this matter.

21 2.3 "Confidential" Information or Items: information (regardless of how generated,
22 stored or maintained) or tangible things that qualify for protection under standards developed
23 under F.R.C.P. 26(c).

24 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a
25 Producing Party.

26 2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery
27 Material in this action.
28

2.6 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential.”

2.7 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential.”

2.8 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.9 House Counsel: attorneys who are employees of a Party.

2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.11 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party or of a competitor of a Party’s and who, at the time of retention, is not anticipated to become an employee of a Party or a competitor of a Party’s. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc) and their employees and subcontractors.

3. SCOPE

3.1 The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by parties or counsel to or in court or in other settings that might reveal Protected Material.

4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 3 or non-party that designates information or items for protection under this Order must take care to
 4 limit any such designation to specific material that qualifies under the appropriate standards. A
 5 Designating Party must take care to designate for protection only those parts of material,
 6 documents, items, or oral or written communications that qualify – so that other portions of the
 7 material, documents, items, or communications for which protection is not warranted are not
 8 swept unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited, as well as designations
 10 that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to
 11 unnecessarily encumber or retard the case development process, or to impose unnecessary
 12 expenses and burdens on other parties).

13 If it comes to a Party's or a non-party's attention that information or items that it
 14 designated for protection do not qualify for protection at all, or do not qualify for the level of
 15 protection initially asserted, that Party or non-party must promptly notify all other parties that it is
 16 withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations.

18 (a) In designating materials, documents or portions thereof as confidential, the
 19 Producing Party shall mark every page and/or significant component, which contains Confidential
 20 Information, with the appropriate "CONFIDENTIAL" stamp. Notwithstanding the foregoing
 21 sentence, a cover letter may be used to designate certain materials, such as computer data, where
 22 stamping would be impractical or impossible.

23 (b) A Party or non-party that makes original documents or materials available
 24 for inspection need not designate them for protection until after the inspecting Party has indicated
 25 which material it would like copied and produced. During the inspection and before the
 26 designation, all of the material made available for inspection shall be deemed
 27 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants copied and
 28 produced, the Producing Party must determine which documents, or portions thereof, qualify for

1 protection under this Order, then, before producing the specified documents, the Producing Party
 2 must affix the appropriate legend (“CONFIDENTIAL”) as described in 5.2(a) above.

3 (c) For testimony given in deposition or in other pretrial proceedings, the Party
 4 or non-party offering or sponsoring the testimony shall have up to 20 days after the transcript is
 5 completed and delivered to the parties to identify the specific portions of the testimony as to
 6 which protection is sought. Only those portions of the testimony that are appropriately designated
 7 for protection within the 20 days shall be covered by the provisions of this Stipulated Protective
 8 Order. During this period, the entire transcript will be treated as CONFIDENTIAL under this
 9 Stipulated Protective Order.

10 Transcript pages containing Protected Material must be separately bound by the court
 11 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL,” as
 12 instructed by the Party or non-party offering or sponsoring the witness or presenting the
 13 testimony.

14 (d) Materials provided by the parties for purposes of this litigation and
 15 designated Confidential pursuant to any prior confidentiality agreement reached in this matter
 16 shall be deemed to be Confidential pursuant to this Order.

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 18 designate qualified information or items as “Confidential” does not, standing alone, waive the
 19 Designating Party’s right to secure protection under this Order for such material. If material is
 20 appropriately designated as “Confidential” after the material was initially produced, the
 21 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure
 22 that the material is treated in accordance with the provisions of this Order.

23 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
 25 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
 26 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
 27 waive its right to challenge a confidentiality designation by electing not to mount a challenge
 28 promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's confidentiality designation must do so in good faith and must begin the process by giving written notice to the Designating Party and explain the basis for their/its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity, and no less than 14 days, to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the protection provided under this Order.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated “CONFIDENTIAL,” subject to this Stipulated
4 Protective Order, only to:

5 (a) counsel of record for the party to whom such documents or materials are
6 produced or given, including co-counsel of record and the legal associates, paralegals, clerical or
7 other support staff or services of such counsel or co-counsel assigned to assist such counsel in the
8 preparation of this litigation;

9 (b) Wal-Mart Stores, Inc., including but not limited to their counsel, including
10 paralegals, clerical or other support staff or services and any current and/or former officers,
11 directors, managers, supervisors or other employees with responsibilities related to the subject
12 matter of this litigation;

13 (c) the named plaintiffs Barry Smith, Michael Wiggins, Danton Ballard and
14 Nathan Lyons;

15 (d) experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this litigation, and who have signed the “Agreement to Be
17 Bound by Protective Order” (Exhibit A);

18 (e) the court and its personnel;

19 (f) court reporters, their staffs, and professional vendors to whom disclosure is
20 reasonably necessary for this litigation;

21 (g) during their depositions, witnesses in the action to whom disclosure is
22 reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”
23 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
24 Protected Material must be separately bound by the court reporter and may not be disclosed to
25 anyone except as permitted under this Stipulated Protective Order;

26 (h) the author of the document or the original source of the information.
27
28

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “CONFIDENTIAL,” the Receiving Party must so notify the Designating Party immediately in writing (by fax, if possible) and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material. Nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound by Protective Order” that is attached hereto as Exhibit A.

10. FILING PROTECTED MATERIAL

Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5.

11. FINAL DISPOSITION

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order.

1 Similarly, no party waives any right to object on any ground to the use in evidence of any of the
2 material covered by this Protective Order.

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6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7
8 SCHWARTZ, DANIELS & BRADLEY

9
10 DATED: _____ /s/ Marcus J. Bradley /s/ _____
11 Marcus J. Bradley
12 Attorneys for Plaintiffs

13 ORRICK, HERRINGTON & SUTCLIFFE LLP

14
15 DATED: _____ /s/ Michael A. Aparicio /s/ _____
16 Michael A. Aparicio
17 Attorneys for Defendant
Wal-Mart Stores, Inc.

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19
20 DATED: June 26, 2007 _____
21  _____
22 Sandra Brown Armstrong
23 United States District Judge

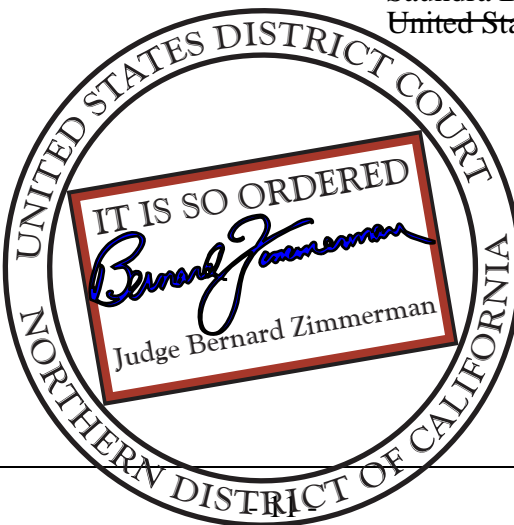


EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the cases of Barry Smith and Michael Wiggins v. Wal-Mart Stores, Inc., Action Number C 06-02069 SBA and Danton Ballard and Nathan Lyons v. Wal-Mart Stores, Inc., Action Number CV 06 3790 SBA. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____
_____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]